

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ERICK A.,

Claimant,

SOUTH CENTRAL LOS ANGELES  
REGIONAL CENTER,

Service Agency.

Case No. 2011080078

**DECISION**

Administrative Law Judge Chris Ruiz heard this matter on September 16, 2011, in Los Angeles, California

Johanna Arias-Bhatia, Fair Hearings/Government Affairs Manager, represented South Central Los Angeles Regional Center (Regional Center or Service Agency or SCLARC).

Victoria Baca, M.Ed., Advocate, represented Erick A. (Claimant) who was not present at the hearing. Claimant's mother Adela A. was present at the hearing.

Evidence was received, the matter argued, and the case submitted for decision on the hearing date. The Administrative Law Judge makes the following factual findings, legal conclusions, and orders:

**ISSUES PRESENTED**

Shall the Service Agency be allowed to discontinue funding for the 30 hours per month of independent living skills (ILS)<sup>1</sup> training that Claimant had been receiving through Partnership for Active Learning Services, Inc. (PALS).

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<sup>1</sup> ILS training is defined as a program that provides adults functional skills training necessary to secure a self-sustaining, independent living situation in the community and/or provide the support necessary to maintain those skills.

## FACTUAL FINDINGS

1. Claimant is 29 years old and is a client of the Service Agency based on diagnoses of autism, severe mental retardation, and epilepsy, pursuant to the Lanterman Developmental Disabilities Services Act (the Lanterman Act), California Welfare and Institutions Code, section 4500, et seq.<sup>2</sup> Claimant currently receives services as a result of his developmental disabilities.
2. Claimant has been receiving 30 hours, per month, of ILS training from PALS for approximately five years. His most recent Individual Program Plan (IPP) and Annual Consumer Contract meetings occurred on May 8 and June 28, 2011, respectively. On July 15, 2011, the Service Agency sent a Notice of Proposed Action (NOPA) which proposed to terminate, in total, the ILS training Claimant has been receiving for the last five years. The stated reason was because “you (Claimant) do not intend to reside independently within the next six months.” The Service Agency also stated that Claimant’s ILS could be provided by In-Home Supportive Services (IHSS), a “generic” program funded by Los Angeles County which can provide assistance to a consumer, rather than training the consumer to be independent, which is the purpose of ILS. Claimant filed a Request for Fair Hearing on August 3, 2011.
3. Claimant lives with his family and it was established that his family does not want him to live by himself. Further, it was established that even with ILS it is highly unlikely that Claimant will ever be able to live alone.
4. Claimant presently receives 143 IHSS hours per month. However, it was not established that these hours would sufficiently cover the loss of the 30 ILS hours at issue. It also was not established, as the Service Agency contended, that Claimant was/is not meeting his ILS goals. Rather, at the time of the most recent IPP, the Service Agency determined that funding for ILS should be discontinued because Claimant and his family have no intention of having Claimant live by himself.
5. It was established that ILS can be funded by the Service Agency for Claimant even though he resides with his family. Exhibit 6, the Service Agency’s ILS policy, states that ILS services can be provided to enhance a consumer’s independent living skills while residing with his natural family. (Exhibit 6, page 1, first paragraph). The general goal of ILS services is to assist consumers to be independent and, if possible, to live outside their family home. However, the Service Agency’s own policy does not require the Claimant to reside outside his family home to receive ILS services.

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

6. While it was established that PALS is primarily providing personal assistance to Claimant, rather than training, it was not established that this issue has ever been raised by the Service Agency during the last five years. That is, PALS is the Service Agency's vendor. If PALS has not, or is not, properly providing ILS services to Claimant, that is an issue to be resolved between the Service Agency and PALS.

## LEGAL CONCLUSIONS

1. Throughout the applicable statutes and regulations, found in sections 4700-4716, and California Code of Regulations, title 17, sections 50900 - 50964, the state level fair hearing is referred to as an appeal of the Service Agency's decision. In this instance, where the Service Agency seeks to modify a service, the burden is on it to demonstrate that its decision is correct. The burden of proof is by a preponderance of the evidence. (Evid. Code, §§ 115 and 500.) To meet its burden of proof, the Service Agency must submit a preponderance of evidence to establish that it is entitled to terminate the benefits provided to Claimant. No published decision has been found that addresses the applicability of this general principle to Lanterman Act fair hearing proceedings. However, it is concluded by analogy that the party in such proceedings who seeks to change the status quo has the burden of proof. In the present proceeding, it is the Service Agency which seeks to change the level of services. Accordingly, the Service Agency has the burden of proof.

2. The procedures that a Service Agency must follow when terminating the services that a vendor is providing to a consumer are set forth in California Code of Regulations, title 17, section 56718, which provides:

(a) Funding of a consumer's placement in a vendor's program shall be terminated when one or more of the following occur:

(1) The Service Agency issues a written determination stating that continued participation jeopardized the consumer's health and safety;

(2) The consumer or authorized consumer representative makes a written or oral request to the Service Agency to discontinue participation or the consumer can no longer attend the program due to an unanticipated change in residence;

(3) The ID Team has determined through a consumer evaluation that the vendor's program no longer meets the consumer's needs;

(4) The vendor determines that its program may no longer meet the consumer's needs; or

(5) The consumer, or authorized consumer representative acting on behalf of the consumer, consents to an alternate placement identified by the ID Team as being able to meet the consumer's needs and as being more cost effective. The alternate placement shall be considered more cost effective if the combined cost of the alternate placement and the cost of transporting the consumer to and from the alternate placement is less than the combined cost of the consumer's current placement and the cost of transporting the consumer to and from the current placement.

(b) When a determination is made pursuant to (a)(1), (3), (4) or (5) above, the basis for the determination shall be documented in writing in the consumer's case file by the Service Agency for (a)(1) and/or (3) and/or (5) and by the vendor for (a)(4). The Service Agency shall also include written documentation in the consumer's file that the consumer or authorized consumer representative has been informed of the fair hearing rights pursuant to Welfare and Institutions Code, Sections 4701, 4705 and 4710 when the determination is made pursuant to (a)(1), (3) or (5) above.

(c) When the Service Agency or the vendor proposes to terminate the consumer's placement in the vendor's program, other than in accordance with (a)(1) or (a)(2) above, the initiating party shall notify the other party and the consumer in writing at least 30 days prior to the proposed termination date. Such notice shall include a written statement of reasons for the termination. If the Service Agency terminates the placement prior to the end of the 30 day notice period, except as specified in (a)(1) and (a)(2) above, the vendor shall be paid for those days of program services during that 30 days period for which the consumer would have been authorized to receive services as identified in the IPP. Funding shall not continue under either of the following circumstances:

(1) There is agreement between the Service Agency, vendor, and the consumer or authorized consumer representative for an earlier termination date. In this instance, funding shall be provided through the date the consumer leaves the program.

(2) The consumer's vacated place in the program has been filled by another consumer. In this instance, funding for the consumer who is no longer in the program shall cease on the date the substitute consumer begins attending.

(d) When the conditions specified in (a)(1) above exist, termination shall be immediate and no further payment shall be made, except as specified in (e) below.

(e) When the conditions specified in (a)(1), (a)(3) or (a)(5) above exist, termination of funding shall not be made if the consumer files a fair hearing request pursuant to Welfare and Institutions Code, Sections 4700 through 4730.

(f) When the conditions specified in (a)(2) above exist, funding shall terminate immediately upon the consumer's nonparticipation. The Service Agency shall notify the vendor in writing of the reason that the consumer no longer wishes to participate in the program. Such notification shall be made within 10 days of the date the Service Agency is notified by the consumer or authorized consumer representative.

(g) A vendor may exclude a consumer from participation in the program during periods when the vendor determines that the consumer is a threat to the health and safety of other individuals in the program. Such exclusion shall be followed by a meeting scheduled by the vendor within three working days to include the consumer program coordinator, the consumer and authorized consumer representative to discuss the basis of the exclusion and any program changes that may be required. The provisions of this paragraph shall not apply to exclusions that are made in accordance with a prior written agreement with the Service Agency pertaining to the individual consumer.

3. The Service Agency did not establish that funding for Claimant's ILS services should be terminated at this time for the reasons set forth in Factual Findings 1-6. The Service Agency's attempt to terminate the ILS services did not comport with the applicable law as stated above. ILS services did not jeopardize Claimant (subdivision (a)(1)); Claimant did not request that the services be terminated (subdivision (a)(2)); the ID Team did not determine the program did not meet Claimant's needs (subdivision (a)(3) which is discussed more fully below regarding the IPP process); the vendor did not make a determination that the program did not meet Claimant's needs (subdivision (a)(4)); and, there was no alternate placement (subdivision (a)(5)). (Factual Findings 1-6.)

4. The Service Agency did not convene a proper IPP meeting prior to its terminating the ILS services. Although an IPP occurred, the Service Agency did not take the steps, as outlined above, required to evaluate Claimant with respect to his need for, and the usefulness of, ILS services. Before the Service Agency can terminate funding of ILS services, it must first assess Claimant's need(s) through the IPP process. (§ 4646.5, subd. (a)(1).

#### ORDER

SCLARC shall not terminate its funding of Claimant's 30 hours of ILS services through PALS.

#### NOTICE

**THIS IS THE FINAL ADMINISTRATIVE DECISION IN THIS MATTER, AND BOTH PARTIES ARE BOUND BY IT. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY (90) DAYS OF THIS DECISION.**

Dated: September 27, 2011

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CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings